

Members

Rep. David Wolkins, Chairperson
Rep. Matt Pierce
Rep. Trent Van Haaften
Rep. Ryan Dvorak
Rep. Ralph Foley
Rep. Cindy Noe
Sen. Richard Bray, Vice-Chairperson
Sen. Jeff Drozda
Sen. Victor Heinold
Sen. Anita Bowser
Sen. Timothy Lanane
Sen. Frank Mrvan



INTERIM STUDY COMMITTEE ON EMINENT DOMAIN

LSA Staff:

Timothy Tyler, Attorney for the Committee
Valeria Ruda, Fiscal Analyst for the Committee

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Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

MEETING MINUTES¹

Meeting Date: October 27, 2005
Meeting Time: 9:30 A.M.
Meeting Place: State House, 200 W. Washington
St., House Chamber
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Rep. David Wolkins, Chairperson; Rep. Matt Pierce; Rep. Trent Van Haaften; Rep. Ryan Dvorak; Rep. Ralph Foley; Rep. Cindy Noe; Sen. Richard Bray, Vice-Chairperson; Sen. Jeff Drozda; Sen. Victor Heinold; Sen. Anita Bowser; Sen. Timothy Lanane; Sen. Frank Mrvan.

Members Absent: None.

Rep. David Wolkins, Chairperson of the Interim Study Committee on Eminent Domain (Committee), called the meeting to order at 9:43 A.M. Rep. Wolkins stated this was the final meeting of the Committee and, before it adjourned, he hoped the Committee could at least vote on general concepts that would be included in legislation to be introduced during the 2006 session of the General Assembly to amend the current Indiana eminent domain law.

Rep. Wolkins then read a statement (Handout #1) on behalf of Rick Hurst of the N.K.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Hurst company clarifying Mr. Hurst's testimony made at the September 21, 2005, Committee meeting. Rep. Wolkins said the statement indicated Mr. Hurst wanted to clarify his testimony as represented in the September 21, 2005, minutes of the Committee by specifying that Mr. Hurst testified that in one short conversation and two later discussions with representatives of the Indiana Stadium and Convention Center Building Authority (Authority), which Authority Chairman David Frick did not attend, the Authority was unwilling to talk about the N.K Hurst Company's proposal to stay where it is and provide alternative parking spaces for the Stadium. Rep. Wolkins continued by saying Mr. Hurst stated the Authority representatives could only talk about compensation and the Hurst Company had never made a financial demand or any other kind of a demand for compensation from the Authority. Rep. Wolkins stated Mr. Hurst said they were looking for a "win-win solution," not for compensation. Rep. Wolkins concluded by saying Mr. Hurst said Chairman David Frick had agreed to listen to Hurst's alternative proposal that would allow the business and employees to remain where they are and swap other nearby space for Stadium parking, which the company believes would save taxpayer money as well as saving the company's business operation.

Rep. Wolkins then stated the Committee would hear public testimony. The first person to testify was Dave Canfield from Indianapolis. Mr. Canfield said he was opposed to eminent domain. He stated eminent domain laws and zoning laws allow "rich guys to take anything they want."

The next person to testify was Matthew Brase from the Indiana Association of Cities and Towns (IACT). Mr. Brase said IACT was grateful to the Committee for discussing eminent domain issues. He said IACT had formed its own task force to address these issues and that they too had been struggling to come up with the appropriate language. He stated it was difficult to balance the rights of property owners with the legitimate economic development interests of local governments.

Mr. Brase continued by stating IACT would continue to work with the General Assembly on legislation to be introduced next year. However, he said that it was important to avoid creating unintended consequences when amending the eminent domain law.

In response to questions from Committee members, Jodie Woods from IACT said when a city or town is trying to determine what constitutes a public benefit for purposes of using eminent domain a "one size fits all" approach does not work. She said the factors that would be used in that evaluation would differ from city to city and town to town. She also stated she had never heard an IACT member state they were opposed to an "objective test" to make these eminent domain determinations.

Ms. Woods also said she did not know of any IACT members who used the eminent domain law to satisfy a campaign promise. She also stated that, if the law is amended to require a surcharge or premium to be paid to an owner of property that is subject to an eminent domain action, it could create a problem under the Constitution of the State of Indiana if a distinction is made between owners of different types of property. She said the surcharge or premium would probably have to be paid to all owners of property taken through the use of eminent domain.

Rep. Wolkins then stated one issue he did not want to discuss at this meeting but that might come up before the 2006 session ends concerns "exactions." He said an exaction of private property occurs when a government entity requires the property owner to use or not use part of the property in a certain way in order to obtain permission from the government entity to develop the property.

Rep. Wolkins then distributed a list (Handout #2) of proposed recommendations to Committee members. He said he compiled this list assuming the Committee would also recommend that eminent domain should continue to be used to clean up blighted areas and for economic development purposes.

The list contained the following proposed recommendations and discussion topics:

- *Provide just compensation for property owners when their land is taken by use of eminent domain, as follows:
 - +For agricultural land, 125% of fair market value or equal replacement of acreage.
 - +For owner occupied land, 150% of fair market value.
 - +For blighted property, replacement value or fair market value, whichever is lower.
 - +Should direct or indirect relocation costs for property owners also be included as compensation?
- *Require that no reasonable alternative to the use of eminent domain is available:
 - +Should "no reasonable alternative" mean every alternative would increase the cost of a project by at least 10%?
- *Require the condemnor to pay reasonable attorney's fees:
 - +Should the condemnor be required to only pay 50% of the fees, should the property owner be required to pay the first \$2,500 in fees, etc?
- *Establish time limits on government entities to use properties taken by eminent domain:
 - +Require property to be used for its stated purpose within five years after it is taken by eminent domain or it must be offered for sale to the previous owner at fair market value or compensated value, whichever is lower.
 - +If a government entity makes its intentions known to a property owner that their property may be subject to an eminent domain action, require the action to commence not more than two years after the government entity makes its intentions known.
- *Define "blighted property" as follows:
 - *Any premises that, because of physical condition, use, or occupancy, constitutes a public nuisance or attractive nuisance.
 - *Any dwelling that, because it is dilapidated, unsanitary, unsafe, or vermin infested or lacks the facilities or equipment required housing codes, is unfit for human habitation.
 - *Any structure that is a fire hazard or is otherwise dangerous to the safety of persons or property.
 - *Any structure from which the utilities, plumbing, heating, sewerage, or similar services or facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.
 - *Any vacant or unimproved land in a predominantly built-up neighborhood that, by reason of neglect or lack of maintenance, has become a place for accumulation of trash and debris or a haven for rodents or other vermin.

- *Any property that has tax delinquencies that exceed the value of the property.

- *Any property with code violations that affect health or safety that is not substantially rehabilitated within one year after receiving a notice to rehabilitate from the appropriate code enforcement agency.

- *Any property that, by reason of environmental contamination, poses a threat to public health or safety.

- *Any abandoned property.

- *Define "economic development":

- +May not consider increased tax collections to be a "public use."

- +Must require a predominantly public benefit. Any private benefit must be incidental.

Rep. Wolkins also stated Rep. Foley had sent him a letter that contained suggestions concerning specific changes to eminent domain procedures that he would likely include in any legislation he introduced next session.

After Committee discussion of the proposed recommendations, a motion was made and seconded that the Committee should recommend that eminent domain should only be used for traditional public uses, such as the construction of roads, bridges, and schools. The motion failed by a show of hands.

A motion was then made and seconded that legislation should be introduced during the 2006 session to amend eminent domain laws to address what is considered just compensation for property owners when their land is taken by use of eminent domain, to require that no reasonable alternative to the use of eminent domain is available before eminent domain may be used, to require the condemnor to pay reasonable attorney's fees in an eminent domain action, to establish time limits on government entities to use properties taken by eminent domain, to amend the definition of "blighted property," and to define "economic development." The motion was approved unanimously by a show of hands.

Rep. Wolkins adjourned the meeting at 11:35 A.M.